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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Implementation of the Subscriber Carrier	)	
Selection Changes Provisions of the	)	
Telecommunications Act of 1996	)	
	)	**Docket No. 94-129**
Policies and Rules Concerning	)	
Unauthorized Changes of Consumers'	)	
Long Distance Carriers	)	

REPLY COMMENTS OF THE AMERICA'S CARRIERS TELECOMMUNICATION ASSOCIATION ("ACTA") IN RESPONSE TO FURTHER NOTICE OF PROPOSED RULE MAKING AND MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

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EXECUTIVE SUMMARY

On September 15, 1997, ACTA submitted its initial comments in this proceeding outlining its proposals to curtail unauthorized switching of telecommunications carriers. In these reply comments, ACTA notes that the overwhelming weight of the comments submitted in this proceeding underscore the need for the Commission to adopt a clear definition of slamming as proposed by ACTA.

A clear and unambiguous definition of slamming that incorporates the *mens rea* element commonly found in the codified elements of other acts is especially needed because of the potential, and likelihood, of abuse of the rules by large carriers, especially the incumbent local exchange carriers ("ILECs"). Unfortunately, in their initial comments, the ILECs put forth self-serving proposals that are not designed to promote consumer satisfaction and robust competition, but which are suggested as a means of preserving their monopolies and expanding their business lines into other areas. Nonetheless, ACTA and the ILECs could agree on the adoption of the "pseudo CIC" to identify resellers provided that such ID codes are not used by the ILECs, or other carriers, for anti-competitive purposes. Additionally, ACTA disagrees with those parties that suggested slamming rules should not apply to wireless carriers. The Telecommunications Act of 1996 mandates that such rules must be applied to all telecommunications carriers.

ACTA is particularly alarmed by the comments submitted by the National Association of Attorneys General ("NAAG"). In short, NAAG's suggestions are extreme. Its proposed elimination of the welcome package option would not only harm smaller carriers and, therefore, competition, but have the unintended effect of harming consumers as well by depriving them of a helpful verification tool. Additionally, NAAG contradicts itself when it endorses an "affirmative option"

package. In sum, NAAG's comments illustrate: a fundamental misunderstanding of the telecommunications industry, the fact that their proposals are disingenuous and are merely political fodder to preserve their positions in their inherently political offices, their bias toward favoring the ILECs by beknighting them with quasi-governmental powers and their inability to follow the plain reading of the Telecommunications Act of 1996 and the Code of Federal Regulations.

Instead of adopting the misguided and harmful proposals posited by NAAG, the Commission should adopt the proposals discussed in ACTA's initial comments.

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I. INTRODUCTION

America's Carriers Telecommunication Association ("ACTA"), by its attorneys, submits its reply comments in response to comments filed in this docket which was released on July 15, 1997. ACTA filed initial comments in this proceeding and will merely respond to contrary comments with this submission.

II. ARGUMENT

A. The Overwhelming Weight of the Comments Submitted Underscores ACTA's Proposal to Define Slamming.

1. ILEC Proposals Are Self-Serving, Anticompetitive and Misleading.

Several comments submitted in this proceeding, particularly those of the large incumbent LECs, underscore ACTA's position that a **clear definition of slamming** is required. To start with, some RBOCs have taken the position that if an interexchange carrier seeks to obtain the consumer's

permission to change "all of their long distance service" an exhaustive explanation of the difference between interLATA and intraLATA toll services must be provided. If not, the RBOCs want the switch in the consumer's intraLATA toll service treated as having been "slammed" by the interLATA toll carrier. Ameritech Comments at 5, 8; Comments of U S WEST, Inc. at 11.[1]

Such advocacy is transparently self-serving, anticompetitive and underscores the misuse of "slamming" allegations to serve private ends. Unless such distortions in this emotionally charged area are corrected, by being prohibited, RBOCs and ILECs will embark on yet another self-serving protectionist practice to shield existing customers from outside competition by the device of encouraging a new form of inter vs. intraLATA slamming complaints. It should come as no surprise that such transparently self-serving anticompetitive positioning is used to grossly inflate the numbers of "slamming" complaints. Ameritech Comments at 4-6, 8. This approach reveals on the record that slamming will be defined by individual LECs based on their inherent ability to exploit their unique role in the order/provisioning process to make a case of slamming out of any conduct which causes them to be threatened by a potential or real loss of particular customers.

In the same vein, the RBOCs suggest that any commercial speech of competing carriers which may cause them to lose customers should be considered not only as "slamming," but also regulated as "deceptive" or as involving "consumer fraud." Of course, the commercial speech of

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[1] One can imagine only in horror the increase in the number of irresponsible and unfairly damaging complaints that will be spawned by (1) requiring an explanation of interLATA and intraLATA services, and (2) by allowing the ILECs to assume a position in the process in which they will be able to exercise their self-interests by playing the pivotal role of determining if a consumer's decision was based on proper information supplied by a competing carrier.

these same RBOCs would not be judged by such harsh and searching standards and would remain totally unexamined and therefore unrestricted. *See* Ameritech Comments at Exhibit A. In its marketing letters addressed to "Dear Valued Customer," May 28, 1997, which Ameritech puts forth as perfectly appropriate, states in paragraph 4, that "[y]our reseller will be responsible for installation, repair, billing and a host of other services you may have taken for granted. Ultimately, you will not receive Ameritech's highly accessible customer service . . . ."

This statement is a boldfaced misrepresentation intended to create negative impressions designed to create concern in the end user's mind about the quality and reliability of services if a reseller carrier is selected. The phrase "you may have taken for granted" is deceptive in that it: (1) implies that the end user will be "losing" something he/she hasn't fully evaluated or appreciated in the past; and (2) that this overlooked value won't be available if the switch is made to the new entrant resale supplier. The use of the term "ultimately" implies that while the end user may not notice any changes in its level of service at first, it eventually will. The very vagueness and uncertainty created by the use of this term in this context is further intended to create an even greater fear in the end user -- the fear not only of the unknown threat, but the time frame in which that threat will become a reality. This environment of fear is then coupled with the threat that the end user "will not receive Ameritech's . . . service," a deprivation made all the worse because it is a service which is said to be "highly accessible," also implying that the new service will not be so. The same or similar tactics of using such half-truths and/or outright misrepresentations have been used and are

still used in the long distance market to frighten many consumers into remaining with or quickly switching back to the largest incumbent carrier.

What is equally deceptive here is what these statements do not say. For example, material facts left out are: that Ameritech's own quality of service has recently been found deficient; that Ameritech, in its efforts to enter the long distance market, points to the "existence" of all forms of competitive services, including resale; and that merely because a reseller is involved, it is presumed that its service commitment level will be significantly less than Ameritech's.

Additionally, while there is no expectation that Ameritech has any obligation to state anything positive about resold services, having intentionally made derisive comments about resale, Ameritech should be held to have assumed the obligation that it explain what "resale" and "resold services" mean. For example, Ameritech should be required to inform the end user that resale means that the new entrant carrier will by contract be using all of Ameritech's plant, facilities and personnel, obtained by law at a state established discount off Ameritech's retail rates.

With this background, accusing a long distance carrier who doesn't include a presentation on the definition of "intraLATA toll of slamming" is clearly an attempt to use the hysteria over this issue as a means to serve not public, but private interests. Given the additional burdens it would place on the Commission's limited enforcement resources, such a self-serving meritless proposal should be quickly rejected.

U S WEST's comments underscore the importance and keen accuracy of ACTA's comments which call for adoption of a definition of "slamming." U S WEST suggested an alternative "better,

swifter" remedy to deal with slamming carriers.[2] In its Comments at 3, n. 5, it says slamming is "*at least grossly negligent* conduct (i.e., failure to supervise) and, most often, intentional conduct." (Emphasis added.) Apparently, in U S WEST's eyes, this includes the failure to make clear the difference between intra- and interLATA toll and "confusing or misleading communications (intentional *or unintentional*) between carriers and customers." U S WEST Comments at 10, 11. (Emphasis added.)

A couple of pages later, U S WEST changes its tone: "bad acts associated with some type of scienter (a *minimum of negligence* and more in the case of an Executing Carrier. . .)." U S WEST Comments at 13, 14. (Emphasis added.) Still later, at 23 and 24, particularly at 24, n. 49, discussing the "slamming problem" of customer confusion over the phrases "local long distance" and "local toll," U S WEST states "[i]t is not that the communication is *per se* misleading, because some individuals might understand it and some communications actually seek -- albeit in small print -- to further describe it. But the language being used is not language calculated to be understood[3] by the vast majority of consumers." (Footnote added. Emphasis in original.)

ACTA must challenge this assertion and hopes that the Commission will also. While attempting to explain to the average reasonable consumer the difference between interLATA and

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[2] It is difficult to discern exactly what U S WEST means by "slamming carrier" due to the vagueness of its comments.

[3] The phrase "not language calculated to be understood" is typical of state consumer fraud or deceptive practices statutes.

intraLATA services would be a daunting, if not self-defeating task, it is incredible to accept the fact that consumers do not know the difference between local and long distance services. If this is not language calculated to be understood, then fear for the educational system in this country should be of more serious concern. The Commission should put U S WEST to its proof. Some form of factual submission should be required before the Commission adopts rules or policies on such difficult to believe assertions, particularly when their source is likely to benefit competitively from having those assertions accepted at face value.

Ignoring the current confusion surrounding what slamming is in the first place, U S WEST suggests that "misrepresentation to an individual consumer" should be punished by fines up to $1 million, and that the "carrier be prosecuted by the Department of Justice for fraud, with its principals perhaps jailed." U S WEST Comments at 17, 18. If such vigorous enforcement is too difficult, it suggests that significant fines be imposed just based on a company's ratio of complaints. These complaints are made to and categorized by the LEC, using its own perception of whose commercial speech is "misleading" and therefore amounts to "slamming." Naturally, the LEC's own commercial speech would never be considered by itself to be misleading. U S WEST, citing the incredibly irresponsible ratios[4] put forth in the Common Carrier Bureau's *Common Carrier Scorecard*,[5] points out that the Commission knows who the bad actors are -- the smaller companies. U S WEST Comments at 18.

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[4] *See* ACTA Comments at 5-7.

[5] *Common Carrier Scorecard*, Federal Communications Commission (Fall 1996) at 11.

It assures the Commission, without any support other than that its own self-serving suggestions, that none of the Big Three IXCs would be inconvenienced by its suggested "conviction-without-trial-or-even-opportunity-to-comment-rule" fining procedure. *Id.* at 19, n. 37.[6]

Of equal concern, is U S WEST's suggestion that the Commission should beknight the LECs with enforcement powers. *Id.* at 20. It is no secret to small carriers that must deal with the monopolist carriers, that all too often their domination of the market, guaranteed revenues, and multi-billion dollar resources, delude them into an arrogance of self-appointed dominion over their customers and competitors. Unfortunately, given the irresponsible use of standards which skew statistical data as represented by the *Scorecard*, it is not surprising that such arrogance can extend to the very government agencies and instrumentalities to which they owe obedience. In short, one of the worse things the Commission could do is not only to allow the already disruptive and anticompetitive interference caused by the BOCs' necessary participation in the order provisioning process, but to formally recognize in the BOCs or other ILECs some form of quasi-governmental authority over that process. There is no doubt that the LECs would use such authority for

[6] It is disturbing that U S WEST is able to cite an FCC publication to bash small carriers and then further exhibit its disregard for small carriers by simply writing off their concerns as of no value or importance. Such unevenness on the part of an incumbent monopolist is of little surprise. Its tendency to cite the Commission's own publications in support of its self-serving and grossly unsupported and inaccurate conclusions is of serious concern.

competitive advantage by punishing alleged offenders without a semblance of fairness or due process,[7] and to aggrandize their own self-proclaimed trustworthiness to consumers.

U S WEST's next audacious suggestion is that ILECs should have the authority to require a written LOA or a third-party verification process and entity approved by the LEC, perhaps with audit rights. U S WEST Comments at 20 and n. 40. (Emphasis added.) These authorities would be exercised against those carriers "identified as slammers" based on the number of complaints as defined by whatever definition the LEC chooses to use and without any right by the accused to respond.

Less this has not already been made clear, ILECs are not governmental bodies, they are commercial competitors. ACTA submits that it will be disastrous to competition, constitutional rights and sound administration for any ILEC or other commercial enterprise engaged in the competitive market or otherwise to play any part whatsoever under any set of circumstances in imposing "penalties" and "corrective processes" (*Id.*) upon any other carriers -- particularly when those carriers are their actual or potential commercial competitors.

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[7] U S WEST's proposal is so transparently absurd that lengthy argument to dismiss it seems unnecessary. On the other hand, it may be worth noting here briefly that bestowing any "policing function" on monopoly carriers, controlling both essential facilities and acting as both supplier and competitor, whose anticompetitive conduct has been often demonstrated, would create an unprecedented threat to all competitors' due process and equal protection rights and constitute an invalid delegation of authority.

In this same vein, ACTA opposes the "three-strikes-and-you're-out" approach as suggested by Southwestern Bell, Pacific Bell, and Nevada Bell.[8] No plan for penalizing a carrier for slamming may contain any provision based on a LEC's evaluation of the merits of the slamming complaint. LECs are not governmental or impartial third parties.

ACTA submits that much of the posturing[9] in this proceeding has very little to do with the protection of consumers. It has everything to do with profits, monetary and political. Carriers are scrambling to promote rules which will interfere little if at all with their own marketing techniques, practices, and commercial speech while putting a chilling effect on the practices of actual or potential competitors. It would not just be a bad idea, it would be truly unconscionable for the Commission to fail to carefully define slamming; unconscionable to allow one competitor to enforce Commission rules against another; and unconscionable to impose punishments based on allegations alone with no opportunity to respond. Unless the Commission, as Congress intended, preempts the states from implementing their own rules, ACTA submits that the large carriers, particularly the ILECs, will get the states to do the dirty work of eliminating competition for them. Without rational and incisive reasoning and logic, small carriers will continue to suffer from an uneven and biased regulatory

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[8] Comments of Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell at 3-5.

[9] NAAG, while an organization of state attorneys general, is nonetheless a political entity. State attorneys general are either appointed or elected political positions and often are positions sought in the first place as powerful offices from which to launch bids for higher offices at the state or federal levels. It is of serious concern that experience has demonstrated that state attorneys general often have a far less critical attitude toward the marketing practices of large incumbent carriers than the often politically impotent smaller carrier.

landscape. Such a consequence is not only harmful to the competitive community, but contrary to the public good, congressional intent and the Commission's statutory authority.

2. The Weight of the Comments Supports ACTA's Call to Have Slamming Rules Apply to All Carriers.

Certain LECs favor exempting wireless carriers from the slamming rules. Bell Atlantic Comments at 2, n.3; Southwestern Bell Comments at 5. Any slamming rules adopted by the Commission should be applied to all carriers equally. The rules should not be limited to landline carriers. It is no justification for limiting the rules to landline carriers to say that slamming is not a problem in the wireless community. If that assertion is correct, and wireless carriers do not engage in slamming, then they should have no objection to having the rules apply to them, as they comply anyway. Additionally, there is no need to go through another rulemaking proceeding to enact slamming rules just for wireless carriers when or if slamming does become a problem in this segment of the industry.

3. ACTA Supports Further Examination of "Pseudo-CICs".

As for the use of "pseudo-CICs" to allow identification of resellers separate from their underlying carriers, this is a meritorious idea that deserves further consideration.[10] This proposal recognizes and emphasizes resellers' status as carriers. Lost in the slamming rules debate is the fact that resale carriers are willing to accept responsibility for their actions. Unfortunately, the confusion resulting from resellers using their underlying carrier's CICs has created misunderstandings among

[10] *See,* Comments of WorldCom, Inc. at p. v-vi.

consumers, billing agents, and various regulatory enforcement bodies. To the extent that this proposal would limit CIC confusion, the Commission should study the idea.

B. The Comments of the National Association of Attorneys General Are Extreme and Would Make Bad Policy if Adopted.

The Telecommunications Subcommittee of the Consumer Protection Committee of the National Association of Attorneys General ("NAAG") filed strident comments urging the Commission to take even more extreme steps in addressing the problem of slamming than outlined in the Notice of Proposed Rulemaking ("NPRM"). They assert that slamming represents an "ever-increasing number of complaints" received by them. They term slamming a:

> plague that distorts the competitive marketplace and impedes its development. Without effective remedial action, consumer confidence will be diminished, subscribers will be stolen from honest competitors, and thieves will be financially rewarded.

NAAG Comments at p. 2. NAAG asserts a "unique role in maintaining the integrity of competitive markets while protecting consumers from fraud and other abusive tactics." NAAG Comments at p. 3.

NAAG has been one of the leaders in calling for more stringent measures regarding slamming. Given the importance of the NAAG comments, ACTA will address them separately. NAAG's position is typical of the hysteria surrounding slamming. Before even attempting to define what slamming is, carriers are being tried and convicted based on mere complaints without any proper investigation. These carriers are then being subjected to extremely harsh and confiscatory penalties. NAAG is attempting to make the proceedings even more one-sided. The

Commission, before asking itself if more measures are needed, should ask itself if it is properly enforcing the rules already in place, and if not, whether it may not be more prudent to use existing measures as opposed to engaging in shortsighted solutions fueled by an illusory fear.

1. NAAG's Proposal to Eliminate the Welcome Package Option Would Hurt Consumers As Well As Competition.

NAAG urges the Commission to eliminate the negative option "welcome package" verification method, because it enables "unscrupulous carriers to enroll subscribers without affirmative consent." NAAG Comments at p. 4. While admitting that it may sometimes be used as a "post-sale verification method," NAAG says it is often used when a initial telemarketer has not obtained authorization for a carrier change thus transforming a customer's failure to respond to the "welcome package" into an invalid basis for change. NAAG Comments at p. 4.

As proves to be a recurring theme throughout NAAG's comments, the evils inherent in slamming are pinpointed to two causes -- the failure of customers to read the materials sent to them by carriers or unscrupulous carriers who conceal the subscriber's right to cancel.

NAAG fails to see the endemic nature of the problems it cites, the inability of the solutions it proposes to solve the problems, and the damage its solutions would cause. Apparently, the "Era of Big Government" is not over. Also, NAAG fails to realize that, at some point, consumers must be free from government "nannyism" to choose to read, or not, the mail they receive. The premise of NAAG's argument, that consumers are too inept to open and read a welcome package, is extreme and, if followed to its logical conclusion, means that consumers are

incapable of paying credit card bills, mortgage payments, tax bills and other important items they receive in the mail. Somewhere along the line the notion of the existence of the vigilant consumer, which does not even rise to the more strict precept of caveat emptor, has been abandoned in the telecommunications industry. Instead, NAAG wants the government to be consumers' nanny -- in effect, supervising every aspect of their interaction with the world. NAAG forgets that contract law is replete with doctrines that encourage a more informed, discerning consumer. For some reason, the telecommunications industry has been singled out to provide an exalted plane for government's meddling with the consumer. In no other industry are consumers excused from their responsibility to open and respond to mail they receive. How ironic that in this era of "deregulation," such onerous proposals as put forth by NAAG would be given serious consideration.

In other industries, the consumer is supposed to rely on the leverage obtained through the competitive nature of the market for self-protection. This should be the case in the telecommunications industry. The reasonable and vigilant consumer will notice that his carrier has been changed without authorization, and he will file a complaint against the carrier that defrauded him, get his calls re-rated, and change to his preferred carrier. There is no rational basis for these extra protections that he is endowed with especially when these protections inhibit the very competitive nature of the market that is designed to protect him. The elimination of the welcome package also reflects once again the overbroad nature of the responses to perceived ills in the interexchange industry. If the mere concern is that people will confuse the welcome

package with junk mail, why not require carriers to send the package by certified mail, therefore, the recipient will know it is important? In addition, if a return receipt is requested, one can ensure that the customer received the package. But elimination of the welcome package option is extreme and unnecessary.

The other recurring theme is that of the unscrupulous carrier. Listening to the NAAG rendition, one would think that half of all carriers are unscrupulous. The Commission and NAAG clearly know better -- the vast majority of carriers are legitimate, ethical carriers. Profitability is only harmed by a company's unethical behavior. NAAG wants to lump all carriers together and punish the good for the deeds of a few allegedly "bad" carriers. Moreover, the "bad" carriers will not be inhibited by the elimination of a welcome package.[11] If, as NAAG suggests, they will defraud carriers at all costs, these carriers will submit forged LOAs or manufactured verification tapes to execute a change as well, thus circumventing even the most rigid laws.

The welcome package is an invaluable option to small carriers. They should not be penalized for what NAAG sees as a few bad seeds in the industry, especially given the fact that these bad carriers will find other ways to effect their ends.

[11] Additionally, in its comments, NAAG failed to provide any empirical proof whatsoever that there actually are any "bad" seeds in the interexchange industry.

a. NAAG Allegations That Welcome Packages Do Not Provide Adequate Notice Are Unfounded.

NAAG challenges the welcome package as not providing "adequate and reliable notice to subscribers to constitute a *post-sale* confirmation." NAAG Comments at p. 5. (Emphasis in original).

b. ACTA's Response.

One cannot help but note the way in which the NAAG virtually ignores the phrase, "post-sale." NAAG glosses over the underlying fact that by the time a welcome package arrives, a sale has already been made. The welcome package is mere verification of the fact that the customer has been contacted by a telemarketer and has assented to a change in carrier. There is no reason to posit another affirmative hurdle to the scheme. When you purchase a car, a stereo or a house there is no requirement that you reaffirm the sale after you drive the car off the lot or move into the house. In the case of the car or the house if you want to rescind the sale, you are out of luck. In the case of the stereo the customer is the one given the burden of taking the affirmative action of taking the product back to the seller.

Why are the game rules different for the consumer just because it involves his telephone bill? Both NAAG and the Commission fail to realize that the overwhelming majority of carrier changes are actually authorized. Why then is a further affirmance needed by the consumer in every case? The conflagration of the over-coddling of the customer and the overstatement of the slamming problem creates this illusory slamming inferno that NAAG wants to extinguish.

c. NAAG's Comments Regarding Potential Abuse of the Welcome Package Option Go Too Far.

NAAG asserts that because of the "potential for abuse and the absence [sic] a meaningful way to ensure that a 'welcome package' in fact confirms a prior order, this verification procedure should be eliminated." NAAG Comments at p. 5.

d. ACTA's Response.

Is there actually any meaningful way to confirm a prior order? LOAs can be forged. Taped verifications can be manufactured, and even if they are not, as NAAG asserts, very often occur immediately after the telemarketing call where the consumer is still in the "thrall" of the carrier. The welcome package, at least, provides a time for reflection on the part of the consumer. NAAG admits that all verification procedures can be circumvented by unscrupulous carriers. The welcome package actually helps to minimize such circumvention.

Also, as discussed above, no mention is given to refining the process to cure the perceived ills -- i.e., requiring the welcome packages to be sent by certified mail. Instead, the solution is irrational and unsupported by fact, is overkill, and seeks the elimination of a practice, regardless of costs to carriers or other consumers.

e. NAAG's Endorsement of the "Affirmative Option" Undercuts Its Other Arguments.

NAAG says it is amenable to an affirmative-option "welcome package." NAAG Comments at p. 5.

f. **ACTA's Response.**

If consumers are actually as lazy as NAAG suggests, then they are not going to open their mail, find the postcard or send it in. Carriers are being asked to forgo properly obtained new customers out of a politically motivated, reckless disregard for standard business practices. Moreover, the "welcome package" would no longer be a welcome package as the customer is not officially part of the network until he/she sends in the postcard.

2. **NAAG's Proposal to Eliminate Consumer Liability to Carriers for Services Rendered Would Promote Fraud.**

a. **NAAG Comments.**

NAAG urges that "for subscribers who detect unlawful change orders, refuse payment of toll and other charges, and, within a reasonable time, take steps to replace the unauthorized carrier, no obligation to pay for disputed, unauthorized carrier charges should be recognized." NAAG argues that this approach to subscriber liability for unpaid, unauthorized charges would place buyers and sellers of telecommunications services under the same standards as exist in other competitive markets. They claim that under most state consumer protection laws, consumers are not liable to pay for services or goods which have not been ordered. NAAG Comments at p. 5.

b. **ACTA's Response.**

NAAG's proposal essentially legitimizes shoplifting. Surely if a person keeps goods he/she has taken from a vendor, he/she should be required to pay for them. The same should be true for telecommunications services. Phone usage is not a product that can be returned. One

state consumer counsel advocate does assert that consumer protection laws do allow the defrauded consumer to keep the goods and not pay for them. NAAG Comments at pp. 5-6; *see also* Comments of The New York State Consumer Protection Board at p. 9. Very often the goods involved in those situations are of little value. In this situation, we are talking of services rendered with a potentially high value.[12]

c. NAAG's Comments Illustrate Its Misunderstanding of the Telecommunications Industry.

NAAG claims that by having no consumer liability for unpaid charges, carriers would be economically motivated to obtain valid authorization. NAAG Comments at p. 6

d. ACTA's Response.

Once again, NAAG fails to think through the position it takes. The slamming carrier is already economically deterred through Section 258's requirement that the slamming carrier turn over the revenues obtained from the customer to the properly authorized carrier. Thus, the slamming carrier will never see that revenue regardless of the approach. Ironically, the NAAG approach may serve as a further incentive to slam because the slamming carrier knows that even if it is caught slamming its competitor will never see the revenue because the customer that was slammed will never pay. Thus, the NAAG approach is superfluous at best, and, in fact, will likely prove to be counter-productive.

[12] Even the California Public Utilities Commission contends that "if customers pay nothing, there is an incentive to allege a slam where none occurred. The solution is to require customers to pay their preferred carrier for calls made after the unauthorized change, that is, after the calls were re-rated." Comments of California Public Utilities Commission at p. 10.

e. The NAAG Approach Will Not Reduce the Number of Slamming Complaints Filed.

NAAG does recognize that its proposal may lead to a decline in revenue for the authorized carrier but that this will be offset due to increased revenue from declining slamming complaints. NAAG Comments at p. 6

f. ACTA's Response.

NAAG is naive to think its approach will lead to a decline in slamming complaints. Consumers, particularly those who are quick to "cry wolf" or are simply dishonest, will have every incentive to raise a slamming complaint as this may lead to free phone service for them. *See* Comments of California Public Utilities Commission at pp. 10-11. There are no penalties for those who raise false slamming complaints, so the incentive is even more pronounced.

The real loser in the NAAG scenario are properly authorized carriers and their customers. Their revenues will decline as more and more consumers refuse to pay their bills claiming that they were slammed. This can only lead to a price increase for honest customers.

g. NAAG's Proposal Would Give ILECs Too Much Power Which Would Result in Abuse.

NAAG also calls for expanding the current approach the LECs use for resolving slamming complaints. Under the current procedure, LECs investigate complaints and require a carrier to

provide a valid LOA or other verification to avoid paying for switching a slammed customer back to the carrier of their choice.[13] NAAG Comments at pp. 6-7.

NAAG wants to expand the process such that:

> if a subscriber disputes that a charge was authorized and withholds payment of disputed charges, collection of disputed charges should be suspended while the carrier has an opportunity to substantiate compliance and authorization for the switch. Unless appropriate documentation is produced, the disputed charges should be deleted from the subscriber's bill.

NAAG Comments at p. 7.

h. ACTA's Response.

NAAG's proposal is in clear contravention of decades of case law requiring that disputed charges be paid first and then resolved. Customers could use the NAAG approach to circumvent the "pay first" requirement and severely strap the revenue flow of carriers, particularly small ones. There is no reason to adopt a "credit card" dispute resolution policy in the telecommunications industry. The present system of refunds or re-rating of calls works well and there is no need to alter the procedure. NAAG has not produced any evidence arguing otherwise.

NAAG claims that any encouragement of bogus claims by the procedure will be outweighed by the deterrent effect, but as shown above, the additional deterrent effect is nil, while the threat of false claims is quite palpable.

[13] How could a customer be considered "slammed" if there is a valid LOA or other verification? This is yet another example of the cavalier way in which the term "slamming" is used.